THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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WRIT PETITION NO : 12656 of 2004

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Dated 07.11.2005

Between:

M/s. Bhushan Gupta, (A.B.C. Proprietor)
ABC Traders, 75-12-26/1, 2nd floor, Bhavanipuram, Vijayawada.

..... PETITIONER

AND

The Commissioner of Commercial Taxes, A.P.Hyderabad.
and others.

.....RESPONDENT(S)

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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WRIT PETITION NO : 12656 of 2004

ORAL ORDER: (Per Sri BRSR,J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to

(1) issue a writ of Mandamus declaring the circular instructions of the Commissioner

of Commercial Taxes issued in CCT Ref.A1(1)/18/2004 dated 9.6.2004 as ultra vires G.O.Ms.No.1091 dated 10.6.1997 and hence void and inoperative, (2) to set aside the notice of provisional monthly assessment and demand vide G.I.No.15310/03-04 dated 30.6.2004 issued for the assessment year 2003-04 and accordingly to interdict the 2nd respondent from proceeding further in pursuance of the show cause notice dated 28.6.2004 for the assessment year
2003-04.

In order to consider as to whether the petitioner is entitled for grant of any relief as prayed for, a few relevant facts leading to filing of the writ petition may have to be noticed.

The Government of Andhra Pradesh in exercise of its power under Section 9 of the A.P.G.S.T. Act, 1957 (for short 'the Act') issued notification in G.O.Ms.No.1091 dated 10.6.1957 granting exemption from the tax payable under the said Act in respect of sales of fresh milk, curd and butter sold by dealers exclusively dealing in them and the products realized by utilization of surplus thereof. It is asserted that by the process of heating, water evaporates in the milk and the result is termed as 'Skimmed Milk', which involves no manufacturing activity.

In ***State of A.P. Vs. Guntur District Milk Producers Cooperative Unit Limited,*** this Court held "since the milk cannot be preserved for long period, it is converted into powder and sold as such. It is nothing but dehydrated form of pasteurised milk which is exempted under G.O.Ms.No.20 dated 2.1.1980."

In TRC No.81 of 1996 dated 31.12.1997 a question had fallen for consideration, which is to the following effect.

> Whether the Sales Tax Appellate Tribunal was justified in confirming the order of the lower authorities by holding that the skimmed milk powder dealt with by the petitioner does not qualify for exemption provided for under G.O.Ms.No.1091 dated 10.6.1957?

This Court took the view that 'skimmed milk powder' is nothing but dehydrated form of pasteurised milk and therefore qualifies for exemption provided in G.O.Ms.No.1091 dated 10.6.1957.

It is not in dispute that G.O.Ms.No.1091 Revenue Dated 10.6.1957 issued by the Government of Andhra Pradesh in exercise of the powers conferred by sub-Section (1) of Section 9 of the Act continues to be in operation. The fact remains that fresh milk continues to enjoy the benefit of exemption from the tax payable under the said Act. There is also no dispute whatsoever that the decisions referred to hereinabove, where this Court took the view that the skimmed milk powder is nothing but milk, attained finality. Therefore, there is no option but to hold that the skimmed milk powder is also exempted from the payment of sales tax under the provisions of the act. The view taken by this Court that skimmed milk powder must be regarded as milk in its dehydrated form has become final. The clarification issued by the Commissioner dated 9.6.2004 that skimmed milk powder cannot be granted exemption applying G.O.Ms.No.54 dated 31.1.2000 is absolutely untenable and unsustainable in law. G.O.Ms.No.54 dated 31.1.2000 in no manner alters or modifies G.O.Ms.No.1091 dated 10.6.1957. G.O.Ms.No.54 dated 31.1.2000 grants exemption from the tax payable under the said Act in respect of sales of pasteurised milk. It in no manner deals with the grant of exemption from the tax payable under the said Act in respect of fresh milk, which includes skimmed milk powder.

We are not impressed by the submission made by the learned standing counsel for the department that the impugned proceedings dated 9.6.2004 issued by the Commissioner of Commercial taxes is addressed to the petitioner only and therefore the same cannot be taken as circular instructions. The Commissioner directed the copies of the clarification issued by him to be sent to all the Deputy Commissioners in the State for favour of information and necessary action. It is unnecessary to critically examine the issue as to whether the said clarification could be treated as the one issued in purported exercise of the power conferred under Section 42 of the Act. Suffice it to hold that the petitioner is not liable to pay any tax so far as the skimmed milk powder is concerned.

The impugned proceedings dated 9.6.2004 issued under purported exercise of the power under Section 42 of the Act is totally unsustainable since the same is in the teeth of the judgments of this Court referred to hereinabove.

In the circumstances, the impugned proceedings dated 9.6.2004 on the file of the Commissioner of Commercial Taxes is quashed. Consequently, the notice of provisional monthly assessment and demand dated 30.6.2004 to the extent of imposing or proposing to impose tax on the skimmed milk powder is declared illegal and ultra vires. The petitioner is entitled for the said relief.

The writ petition is accordingly allowed with costs quantified at Rs.2,000/-.

(B.SUDERSHAN REDDY,J)

dated 07..11..2005

(S.ANANDA REDDY,J)

msv.